that, if a point was not taken before the tribunal which hears the evidence, and evidence could have been adduced which by any possibility could prevent the point from succeeding, it cannot be taken afterwards" (see *Ex parte Firth, In re Cowburn,*[2] *per* Jessel, M.R. at page 429).

In the present case I am not satisfied beyond doubt that we have before us all the facts bearing upon this new contention as completely as would have been the case if it had arisen at the trial.

In any event I am of the opinion that the letter dated 30th July 1962 addressed to the appellant's solicitors by the respondent's solicitors clearly shows that the act of waiver relied on was done not with the intention of recognising an existing tenancy but with the intention as stated in the letter of avoiding any doubt from arising as to whether or not there was any subsisting tenancy.

For these reasons I am of the opinion that the appeal should be dismissed with costs.

Thomson L.P. and **Tan Ah Tah F.J.** concurred.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw*; *Goh Bin Lay & Co.*

LEE KIM LENG v. REGINA

[A.Cr.J. (Chua J.) April 10, 1964]

[Singapore — Magistrate's Appeal No. 101 of 1963]

Penal Code s. 304A — Taxi suddenly stopping at pedestrian crossing — Appellant's car colliding rear of taxi lurching stationery taxi into pedestrian resulting in death — Whether death caused by direct result of rash and negligent act — Criminal liability.

Road Traffic — Taxi stopping suddenly without signal at pedestrian crossing — Car behind taxi colliding with rear of taxi causing taxi to lurch into pedestrian — Whether taxi driver negligent.

To impose criminal liability under section 304A of the Penal Code it is necessary that the death should have been the direct result of a rash and negligent act of the accused and that act must have been the proximate and efficient cause without the intervantion of another's negligence. It must have been the *causa causans*; it is not enough that it may have been *causa sine qua non.*

In this case the deceased a pedestrian, was killed while she was using the pedestrian crossing by an impact caused by the appellant's car colliding with the rear portion of a stationery taxi (which had stopped suddenly at the said crossing) forcing the taxi to lurch into her. He was convicted under section 304A of the Penal Code and sentenced to 4 months imprisonment and disqualified from driving any motor vehicle for 3 years. On appeal,

Held: (1) the taxi driver was negligent in that he failed to see the pedestrian until he was almost upon her and he had stopped suddenly without giving any signal;

(2) the appellant therefore was not wholly or mainly responsible for the collision and the appeal should be allowed.

Case referred to:—

(1) *Emperor* v. *Omkar Ram Pratap* (1902), 4 Bom. L.R. 679.

MAGISTRATE'S APPEAL.

H. E. Cashin for the appellant.

S. R. Chapkhana for the respondent.

Chua J.: The appellant in this case was convicted by a District Court under section 304A of the Penal Code and sentenced to 4 months' imprisonment and disqualified from driving any motor vehicle for a period of 3 years.

I allowed the appeal and said that I would give my reasons later which I now proceed to do.

The learned district judge accepted the evidence of Goh Teck Seng, an eye witness to the accident, who the learned district judge said "gave trustworthy evidence before me in Court."

Goh Teck Seng in his evidence said:

" . . . . . .

I was riding a scooter from Geylang towards town and had passed the Geylang Bridge. I reached a pedestrian crossing. I saw an old woman walking along the pedestrian crossing from my left to right. I stopped my scooter as I saw people walking across. I only saw one old woman. As I stopped my scooter the woman was to my left and 3 feet or 4 feet from the start of the pedestrian crossing.

She reached the centre of the road. When this woman was somewhere in the middle of the road I saw a taxi coming from the town side. By the time the taxi came to a stop the old woman was somewhere in front of it. The taxi was travelling between 20 and 30 m.p.h. It stopped. The taxi driver suddenly stopped his taxi when he saw the old woman walk in front.

A car which was travelling behind the taxi knocked into the rear of the taxi. The stationary taxi moved forward and knocked into the woman. She was then in about the centre portion of the taxi. She was then on my right. She was then walking along the centre of the zebra crossing. The old lady fell down. The taxi moved over her and her body was pushed forward.

I quickly parked my scooter by the side and went up to the taxi. With the help of many passers by we lifted the old woman from underneath. The old woman was still conscious.

. . . . . .

The car NA. 3317 came down at slightly over 30 m.p.h. When I first saw the car I did not see clearly the distance between them. I guess the distance was 15 feet to 16 feet. The crash was a short while after the taxi pulled up."

In cross-examination he said:

" . . . . . .

Q. The taxi driver had just spotted the lady and managed just to stop?

A. Yes.

Q. The accident happened because the car driver had no chance to stop?

A. Yes.

Q. Did you see the taxi driver give any hand signals of stopping?

A. No."

The only act of negligence which the learned district judge found was that the appellant failed to keep a proper look out. In his grounds of decision he said:

"I accepted the facts that the taxi had stopped somewhat suddenly and perhaps without putting up hand signals. Inspite of that I was of the opinion that if the accused had kept a proper look out he should have been able to avoid the impact before a pedestrian crossing. I therefore rejected this submission also and held that the negligence of the accused was the proximate efficient cause of the death of the pedestrian."

In the Indian case of *Emperor* v. *Omkar Ram Pratap* [1] it was held that to impose criminal liability under section 304A of the Indian Penal Code (which is similar to our section 304A of the Penal Code) it is necessary that the death should have been the direct result of a rash and negligent act of the accused and that act must have been the proximate and efficient cause without the intervention of another's negligence. It must have been the *causa causans*; it is not enough that it may have been *causa sine qua non*. I am of the opinion that the law has been laid down correctly in that case.

In the present case the death of the pedestrian was due to the collision between the appellant's car No. NA. 3317 and the taxi and in order to impose a criminal liability on the appellant it must be found as a fact that the collision was entirely or at least mainly due to the act of the appellant.

Now, was the learned district judge, on the evidence before him, right in forming the opinion that "if the accused had kept a proper look out he should have been able to avoid the impact before a pedestrian crossing." In my view he was wrong to form that opinion. Goh Teck Seng, the eye witness whose evidence the learned district judge accepted, said that the taxi driver had just spotted the pedestrian and managed just to stop and that he did not give any signal and that the accident happened because the car driver had no chance to stop.

There is no doubt that the taxi driver was negligent in that he failed to see the pedestrian until he was almost upon her and he had to stop suddenly without giving any signal. I am of the opinion that so far as the evidence goes it is not sufficient to establish that the appellant was wholly or mainly responsible for the collision.

Appeal allowed.

Solicitors: *Murphy & Dunbar.*

GULWANT SINGH v. ABDUL KHALIK

[O.C.J. (Gill J.) April 22, 1964]

[K.L. — Civil Suit No. 31 of 1961]

Moneylending — Memorandum of contract — Copy not authenticated — Copy of promissory note authenticated — Whether contract enforceable — Moneylenders Ordiance, 1951, s.16 — Repayments — Not clear whether towards principal or interest — Course to adopt.

Evidence — Witness telling lies — Treatment of rest of evidence with caution.

Costs — Amount due at judgment date would not exceed $2,000 — Sessions Court scale.

In this action the plaintiff sought the recovery of money due on a promissory note executed by the defendant in the plaintiff's favour for $2,500 with interest. The copy of memorandum of contract was not duly authenticated by the plaintiff before it was delivered, but the copy of the promissory note was.

Held: a promissory note which contained all the terms of the contract and was countersigned by the lender was in itself a sufficient memorandum of the contract for the purpose of section 16 of the Moneylenders Ordinance and therefore the plaintiff was not precluded from enforcing the contract.

Per Gill J.: "....from the evidence produced by the defendant it was clear that he made various payments, but it was not clear whether they were made towards principal or towards interest. In the circumstances the only course for me to adopt was to allow credit for each payment against the sum then due towards principal and interest and then work out the interest on the outstanding balance of the principal sum after the date of each payment."

Observations on evidence of witness who demonstrably tells lies.

ACTION.

Peter Mooney for the plaintiff.

K. Chelvanayagam for the defendant.

Gill J.: This was an action for the recovery of money due on a promissory note executed by the defendant in favour of the plaintiff on 26th March, 1959 for a sum of $2,500 bearing interest at the rate of 18% per annum.

The loan transaction took place in the office of Messrs. Bannon & Bailey, a firm of advocates and solicitors in Kuala Lumpur, where the promissory note sued upon (exhibit P.1) and a memorandum of contract (exhibit P.2) together with copies of each document were prepared. I was satisfied on the evidence that these copies were delivered to the borrower before the money was lent. In fact they were produced at the trial by the defence. It was quite clear that the copy of the memorandum (exhibit D.3) was not duly authenticated by the plaintiff before it was delivered, although the copy of the promissory note (exhibit D.4) was authenticated before delivery.

It was argued by Mr. K. Chelvanayagam on behalf of the defendant that as the copy of the memorandum delivered to the defendant was not authenticated by the plaintiff, the contract was not enforceable. That would appear to be so by